



Department of Defense DIRECTIVE

NUMBER 2010.9

September 30, 1988

USD(A)

SUBJECT: Mutual Logistic Support Between the United States and Governments of Eligible Countries and NATO Subsidiary Bodies

References: (a) DoD Directive 2010.9, "Mutual Logistic Support Between the United States and Governments of Other NATO Countries and NATO Subsidiary Bodies," June 7, 1984 (hereby canceled)
(b) Chapter 137 of title 10, United States Code
(c) Public Law 99-661, "The National Defense Authorization Act for Fiscal Year 1987," November 14, 1986
(d) Sections 2207; 2304(a); 2306(a), (b), and (e); 2306a; and 2313 of title 10, United States Code
(e) through (m), see enclosure 2

1. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and implements 10 U.S.C. 138 (enclosure 1), consistent with reference (b), by updating:

1.1. Policy for the acquisition and transfer of logistic support, supplies, and services under authority of enclosure 1.

1.2. Authority to negotiate and conclude cross-servicing agreements and implementing arrangements.

2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and

Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 3.

4. POLICY

4.1. In 1980, "The North Atlantic Treaty Organization Mutual Support Act of 1979" (NMSA) (enclosure 1) was enacted to simplify the interchange of logistic support, supplies, and services between the United States, North Atlantic Treaty Organization (NATO) countries, and NATO subsidiary bodies, thereby contributing to the readiness of Armed Forces deployed in Europe and adjacent waters. P.L. 99-661 (reference (c)) amended the NMSA, as reflected in enclosure 1, to permit acquisitions and cross-servicing agreements with eligible countries that are not members of NATO and to permit acquisitions and cross-servicing agreements with members of NATO or other eligible countries while the military forces of such country are stationed in, or are performing exercises or training in, North America.

4.2. The NMSA provides two separate forms of authority to the Secretary of Defense as follows:

4.2.1. Acquisitions Outside Cross-Servicing Agreements. The first form authorizes the Department of Defense to acquire logistic support, supplies, and services from governments of NATO and other eligible countries, and NATO subsidiary bodies for U.S. Armed Forces deployed in Europe and adjacent waters or the military regions of eligible countries. This authority is for acquisition only, allows liquidation by cash payment or by replacement-in-kind or exchange of identical or substantially identical items, and does not require the existence of a cross-servicing agreement or implementing arrangement, as defined herein, as a prerequisite.

4.2.2. Cross-Servicing Agreements. The NMSA also authorizes, after consultation with the Secretary of State, cross-servicing agreements between the Department of Defense and governments of designated countries, wherein the Department of Defense agrees to provide logistic support, supplies, and services in return for the reciprocal provision of logistic support, supplies, and services. Compensation for the acquisitions or transfers under cross-servicing agreements may be accomplished by either reimbursement or replacement-in-kind or exchange of items

or services of an identical or substantially identical nature. Cross-servicing may be effected for NATO countries and subsidiary bodies in Europe and adjacent waters, for other designated countries in their respective military regions, or in North America for military forces stationed therein or performing exercises or training therein. Such cross-servicing may be accomplished only under a cross-servicing agreement and implementing arrangements thereto, as applicable, negotiated in accordance with authority delegated herein.

4.3. Foreign countries not members of NATO are deemed eligible for acquisitions under NMSA if they meet one or more of the following criteria:

4.3.1. Have a defense alliance with the United States; or

4.3.2. Permit stationing of U.S. Forces or homeporting of U.S. Naval vessels;

or

4.3.3. Have agreed to prepositioning of U.S. materiel in their country; or

4.3.4. Serve as host for U.S. Forces in exercises or permit other military operations by U.S. Forces in their country.

4.4. After consultation with the Secretary of State, the Secretary of Defense may designate eligible countries not members of NATO as authorized for cross-servicing agreements after a minimum 30-day notification to the Committees on Armed Services and Foreign Relations of the U.S. Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives.

4.5. Congressional notification is not required for U.S. acquisitions from, or for cross-servicing agreements with, NATO countries or NATO subsidiary bodies. U.S. acquisitions using NMSA authority from eligible countries not members of NATO, unlike cross-servicing agreements, may be effected without Department of State (DoS) consultation or Congressional notification.

4.6. Acquisition of logistic support, supplies, and services--and cross-servicing agreements and implementing arrangements thereto entered into under this Directive--shall be made in accordance with 10 U.S.C. 137 (reference (b)) and 138 (enclosure 1).

4.6.1. According to Section 2343(b) of enclosure 1, the following provisions of law do not apply to NMSA acquisitions:

4.6.1.1. Sections 2207; 2304(a); 2306(a), (b), and (e); 2306a; and 2313 (10 U.S.C.) (reference (d)).

4.6.1.2. Section 3741 of the Revised Statutes (41 U.S.C. 22) (reference (e)).

4.6.1.3. Section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) (reference (f)).

4.6.2. The provisions of law in paragraph 4.6.1., above, are the only ones not applicable to NMSA acquisitions. Even though those provisions of law are not applicable, all other provisions of law and regulations, including any such new requirements, are applicable according to their terms. Acquisitions under authority of the NMSA shall comply with general principles of prudent procurement practice. When implementing this Directive, existing DoD acquisition and logistics principles shall be used in conjunction with this Directive. DoD Components shall publish additional acquisition guidance as needed. Additional guidance may be incorporated into the Department of Defense Federal Acquisition Regulation Supplement (reference (g)).

4.7. The scope of the NMSA is confined to logistic support, supplies, and services. Weapon systems, major items of equipment, and the initial quantities of replacement parts and spares for major items of organizational equipment covered by tables of organization and equipment, tables of distribution and allowance, or equivalent documents may not be acquired or transferred under authority of this Directive.

4.8. When U.S. acquisition of host-nation logistic support from an eligible government or NATO subsidiary body is advantageous to the United States, use of NMSA acquisition authority is encouraged, subject to the obligation limitations and other provisions of this Directive. While use of NMSA authority is not mandatory for such acquisitions, its use can facilitate the acquisition process by rendering certain provisions of U.S. law inapplicable (subsection 4.6., above). The NMSA and this Directive may not be used by DoD Components to procure, as a routine or normal source, those goods and services reasonably available from U.S. commercial sources.

4.9. U.S. transfers under the NMSA may take place only under a cross-servicing agreement. U.S. transfers are designed to facilitate mutual logistic support between the United States and designated countries and NATO subsidiary bodies to be used primarily during combined exercises, training, deployments, operations, or other

cooperative efforts, and for unforeseen circumstances or exigencies when the recipient may have a temporary need of logistic support, supplies, and services. The NMSA is not intended to be used to satisfy the routine resupply requirements of designated countries. Therefore, the NMSA and this Directive may not be used to transfer, as a routine or normal source, logistic support, supplies, and services reasonably available from U.S. commercial sources or from the United States through foreign military sales procedures under 22 U.S.C. 2751 (reference (h)).

4.10. Under this Directive, DoD Components are encouraged to use NMSA exchange or replacement-in-kind payment procedures when such transactions enhance operational readiness, foster mutual planning, advance cost-effective alternative means of support, promote interoperability, or otherwise offer advantages to the United States or are of mutual benefit to the United States and other participating countries.

4.11. DoD Components in acquiring or transferring logistic support or services shall establish applicable oversight procedures to ensure that all agreements, arrangements, or contracts entered into under the NMSA shall be free from self-dealing, bribery, and conflicts of interest. If a foreign government or NATO official is suspected of self-dealing, bribery, or a conflict of interest, care must be exercised to avoid premature allegations that may compromise the investigative process. Such matters should be referred., with recommendations for further action, through Military Service channels (with information copies to Unified Combatant Commands).

4.12. DoD Components shall use, whenever practical, a single, separate cross-servicing agreement as the basis for both acquisition and transfer of logistic support, supplies, and services with designated governments and NATO subsidiary bodies under the NMSA and this Directive. Until such cross-servicing agreements are signed, DoD Components may acquire, but not transfer, logistic support, supplies, and services from eligible governments or NATO subsidiary bodies under the authority described in paragraph 4.2.1., above, of this Directive or by using other authorized acquisition authorities.

4.13. Because NMSA provides additional (not "in place of") authority given under other provisions of U.S. law, prior arrangements for reciprocal support that are satisfactory to both the United States and eligible governments need not be affected by this Directive. When mutually desired, agreements negotiated under the NMSA and this Directive may replace or supplement those prior arrangements. Before concluding, extending, or renewing any agreement or arrangement involving the exchange or cross-servicing of logistic support, supplies, or services with other

governments or NATO subsidiary bodies, DoD Components shall determine whether authority implemented by this Directive or other U.S. statutory authorities are more applicable.

4.14. NATO Standardization Agreements (STANAGs)

4.14.1. It is DoD policy to encourage and support the development of NATO STANAGs that provide standard procedures for use by NATO countries in furnishing and receiving logistic support. Implementation of the NMSA in no way shall discourage or replace the use of NATO STANAGs. Whenever practicable, NATO STANAG procedures, forms, and formats shall be used to execute transactions under the NMSA. This policy may require, where applicable, that the United States negotiate NATO STANAG procedures, forms, and formats that meet the minimum data requirements for transactions under the NMSA. Inconsistent STANAGs; i.e., inconsistent pricing or repayment policies, may not be used to implement the NMSA and this Directive. However, minor procedural differences would not prevent the use of STANAGs to implement the NMSA and this Directive.

4.14.2. If NATO STANAGs can be ratified and implemented with a legal basis other than the NMSA, that authority shall be used, providing it is determined to be most advantageous to the United States.

4.14.3. If the NMSA is used as the legal basis for ratifying all or part of a NATO STANAG, U.S. ratification clearly shall indicate the portion of the STANAG that is based on the NMSA. This ratification must state that the United States must adhere to any limitations under this Directive. To qualify as a separate cross-servicing agreement, a STANAG shall comply with all requirements of the NMSA and this Directive.

4.14.4. If NATO STANAGs cannot be ratified and implemented by the United States, and the subject matter of the STANAGs is related to acquisitions and cross-servicing, the United States, nevertheless, shall seek to achieve procedures, forms, and formats under those STANAGs that are compatible with the NMSA. The United States then shall be in a better position to ratify such STANAGs if at some later time the reasons for nonratification have been resolved.

4.15. For transactions outside of North America involving NATO countries and NATO subsidiary bodies, only logistic support, supplies, and services in the inventory or otherwise under the jurisdiction and control of U.S. Armed Forces deployed in Europe and adjacent waters may be transferred under the NMSA and this Directive. For transactions outside of North America involving other designated countries, only

logistic support, supplies, and services in the inventory or otherwise under the jurisdiction and control of U.S. Armed Forces deployed in the country or in the military region of the designated country may be transferred under the NMSA and this Directive. For North American transactions involving a country having military forces stationed in or performing exercises or training in North America, only logistic support, supplies, and services in the inventory or otherwise under the jurisdiction of U.S. Armed Forces in North America may be transferred under the NMSA and this Directive, and only to meet the requirements of those military forces of a designated country while they are present in North America (subsection 4.8., above).

4.16. Inventory levels of the U.S. Armed Forces may not be increased (as a whole, within NATO, or within any country or military region) in anticipation of orders to be made by other countries pursuant to agreements negotiated under the NMSA and this Directive.

4.17. Financial policy for transactions under the NMSA and this Directive shall be in accordance with DoD Instruction 2010.10 (reference (i)).

4.18. Except in emergencies, other acquisition authorities shall be used to acquire logistic supplies, support, or services from the governments of eligible countries when use of reciprocal pricing principles under the NMSA and this Directive would result in a higher acquisition cost to the United States (other than insignificant differences).

4.19. Caution shall be exercised in extending provisions of the NMSA beyond NATO countries and NATO subsidiary bodies.

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)) shall monitor compliance with this Directive.

5.2. The Assistant Secretary of Defense (International Security Policy) (ASD(ISP)) or the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)), as applicable, shall effect required consultation with the Secretary of State, notify Congressional committees (subsection 4.4., above), and designate countries as eligible for cross-servicing agreements.

5.3. The Assistant Secretary of Defense (Comptroller) (ASD(C)) shall issue accounting, pricing, internal control, and reporting policies to implement this Directive and the NMSA.

5.4. The Chairman, Joint Chiefs of Staff (CJCS), shall:

5.4.1. Negotiate and conclude cross-servicing agreements or multi-Service implementing arrangements or delegate this authority to an Executive Agent. All proposed new or revised cross-servicing agreements shall be referred back to the Office of the Under Secretary of Defense (Policy) (OUSD(P)) for review and authority to conclude.

5.4.2. Determine the eligibility of countries not members of NATO for U.S. acquisitions under authority of this Directive (subsection 4.3.). This authority may be delegated to Unified Combatant Commands.

5.5. The Secretaries of the Military Departments, or designees, and the Directors of Defense Agencies, or designees, shall:

5.5.1. Acquire logistic support, supplies, or services either under cross-servicing agreements or separately.

5.5.2. Transfer logistic support, supplies, or services under cross-servicing agreements.

5.5.3. In consultation with the applicable Unified Combatant Commander, negotiate and conclude cross-servicing agreements in special instances (applicable to only one Military Service; i.e., with the NATO Airborne Early Warning (AEW) Force Command), when authorized by the CJCS.

5.5.4. Negotiate and conclude any required implementing arrangements applicable to a single-Service component or to a major command operating in the military region (or NATO operational area) of a Unified Combatant Command. Unified Combatant Commands shall be consulted before the Secretary concerned negotiates a single-Service implementing arrangement.

5.5.5. Establish applicable controls to prevent exceeding the limitations of the credits and liabilities ceiling as outlined in DoD Instruction 2010.10 (reference (i)).

5.5.6. Establish applicable oversight procedures in accordance with subsection 4.11., above.

5.6. The Unified Combatant Commands shall:

5.6.1. Negotiate cross-servicing agreements as an Executive Agent when

authorized by the CJCS. Conclude cross-servicing agreements when authorized (subsection 4.2., above). This authority may be delegated to a sub-Unified Command or to a Service component.

5.6.2. Negotiate and conclude any required multi-Service implementing arrangements with authority to appoint a sub-Unified Command or a Service component as Executive Agent.

5.6.3. On request, negotiate implementing arrangements for DoD Components not subordinate to the command concerned. This authority may be delegated to a sub-Unified Command or to a Service component.

5.6.4. Allocate among the DoD Components the limitations of the credits and liabilities ceiling as outlined in DoD Instruction 2010.10 (reference (i)). This authority may be delegated to a sub-Unified Command.

5.6.5. When authorized by the CJCS, determine the eligibility of countries not members of NATO for U.S. acquisitions under authority of this Directive (subsection 4.3.).

6. PROCEDURES

6.1. Under the NMSA, the purchase, sale, or exchange of logistic support, supplies, and services may be accomplished by a contract or requisition or other applicable form required by a cross-servicing agreement, in accordance with the limitations of the NMSA. When there is an applicable implementing arrangement, the requisition or other applicable order form shall be issued in accordance with the terms of both the cross-servicing agreement and the implementing arrangement.

6.2. Except to the extent restricted by section 4., above, acquisition of logistic support, supplies, and services under this Directive and the NMSA (whether for payment in currency, replacement-in-kind, or exchange of identical or substantially identical items) may be accomplished through the acquisition authority and procedures of the NMSA without a cross-servicing agreement or implementing arrangement. However, such acquisitions otherwise shall comply with this Directive.

6.3. Each acquisition or transfer of logistic support, supplies, and services by DoD Components under the authority of the NMSA shall be documented. For NATO countries or NATO subsidiary bodies, the basic transfer agreement shall stipulate that the logistic support, supplies, and services may not be retransferred by the recipient or

any other transferee to any entity other than the government of another NATO country, a NATO subsidiary body, or agent thereof without the prior written consent of the U.S. Government, obtained through applicable DoD channels. If the transfer is made using forms and formats prescribed by a NATO STANAG, but is based on the authority 'in the NMSA, this stipulation shall be added to the STANAG documentation at the time of the transfer, or reference shall be made to a cross-servicing agreement referencing this stipulation. For countries not members of NATO, the basic transfer agreement shall stipulate that the logistic support, supplies, and services may not be retransferred by the recipient to any entity without the prior written consent of the U.S. Government, obtained through applicable DoD channels.

6.4. Agreements, implementing arrangements, and requisitions that obligate funds shall not obligate such funds in excess of their statutory availability. The authority of 10 U.S.C. 2306(g) (reference (j)) may be exercised in obligation of such funds. Acquisition restrictions in annual DoD authorization and appropriation acts and other laws apply to acquisitions under this Directive.

6.5. Peacetime cross-servicing agreements that may require continuation during times of active hostilities shall include, to the maximum extent possible, applicable provisions ensuring that the specified cross-servicing shall be continued during such time.

6.6. Except as otherwise provided herein, cross-servicing agreements and such other agreements as may be required to effect U.S. acquisition of logistic support, supplies, and services shall be negotiated and concluded in accordance with DoD Directive 5530.3 (reference (k)).

6.7. When useful and applicable, DoD Components are encouraged to establish simplified procedures under cross-servicing agreements, implementing arrangements, contracts, or other contractual instruments under the NMSA similar to those used in basic ordering agreements, with authority to place orders delegated to the lowest practical and prudent level. Officials delegated authority under section 5., above, to negotiate and conclude cross-servicing agreements and implementing arrangements may delegate authority to applicable personnel to implement these agreements and arrangements by the issuing and accepting of requisitions or other forms required by these agreements and arrangements. The authority to issue and accept requisitions and other forms may include the authority to negotiate and conclude terms and conditions of acquisition, transfer, replacement-in-kind, or exchange made under such requisitions or other forms, if such terms and conditions are consistent with this Directive, applicable cross-servicing agreements, and applicable implementing

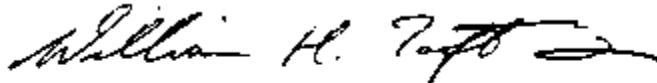
arrangements. Personnel implementing these agreements and arrangements by issuing and accepting requisitions or other forms shall be designated specifically and shall be selected so as to have the necessary knowledge and experience to carry out authorized transactions in accordance with applicable laws, this Directive, and other implementing regulations.

7. INFORMATION REQUIREMENTS

Information requirements, recordkeeping, and reporting procedures shall be in accordance with DoD Instruction 2010.10 (reference (i)).

8. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Military Departments and Unified Commands shall forward one copy of implementing documents to the Assistant Secretary of Defense (Production and Logistics) within 120 days.

A handwritten signature in black ink, appearing to read "William H. Taft, IV". The signature is fluid and cursive, with a long horizontal stroke at the end.

William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 3

- E1. Chapter 138 of title 10, United States Code
- E2. References, continued
- E3. Definitions

E1. ENCLOSURE 1CHAPTER 138 of TITLE 10, UNITED STATES CODE**CHAPTER 138-ACQUISITION AND CROSS-SERVICING
AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES**

Sec.

- 2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States.
- 2342. Cross-servicing agreements.
- 2343. Law applicable to acquisition and cross-servicing agreements.
- 2344. Methods of payment for acquisitions and transfers by the United States.
- 2345. Liquidation of accrued credits and liabilities.
- 2346. Crediting of receipts.
- 2347. Limitation on amounts that may be obligated or accrued by the United States.
- 2348. Inventories of supplies not to be increased.
- 2349. Annual reports.
- 2350. Definitions.

§ 2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States

Subject to section 2343 of this title and subject to the availability of appropriations, the Secretary of Defense may-

(1) acquire from the Governments of North Atlantic Treaty Organization countries and from North Atlantic Treaty Organization subsidiary bodies logistic support, supplies, and services for elements of the armed forces deployed in Europe and adjacent waters; and

(2) acquire from any government not a member of the North Atlantic Treaty Organization in which elements of the armed forces are deployed (or are to be deployed) logistic support, supplies, and services for elements of the armed forces deployed (or to be deployed) in such country or in the military region in which such country is located if that country-

(A) has a defense alliance with the United States;

(B) permits the stationing of members of the armed forces in such country or the homeporting of naval vessels of the United States in such country;

(C) has agreed to preposition materiel of the United States in such country; or

(D) serves as the host country to military exercises which include elements of the armed forces or permits other military operations by the armed forces in such country.

(Added P.L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2321, and renumbered § 2341 and amended P.L. 99-145, § 1304(a) (1), (4), Nov. 8, 1985, 99 Stat. 741; revised in its entirety P.L. 99-661, § 1104(a), Nov. 14, 1986, 100 Stat. 3963.)

§ 2342. Cross Servicing Agreements

(a) Subject to section 2343 of this title and to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into any of the following agreements:

(1) Agreement with the government of a North Atlantic Treaty Organization country (or with a North Atlantic Treaty Organization subsidiary body) under which-

(A) the United States agrees to provide logistic support, supplies, and services to military forces of such country (or subsidiary body) deployed in Europe and adjacent waters, in return for

(B) the reciprocal provision of logistic support, supplies, and services by such country (or subsidiary body) to elements of the armed forces deployed in Europe and adjacent waters.

(2) An agreement with the government of a country designated by the Secretary of Defense which is not a member of the North Atlantic Treaty Organization under which-

(A) the United States agrees to provide logistic support, supplies, and services to the military forces of such country, in return for

(B) the reciprocal provision of logistic support, supplies, and services by such country to elements of the armed forces deployed in such country or in the military region in which such country is located.

(3) An agreement with the government of a country referred to in paragraph (1) or (2) under which-

(A) the United States agrees to provide logistic support, supplies, and services to the military forces of such country, in return for

(B) the reciprocal provision of support, supplies, and services for the armed forces from such country while the military forces of such country are stationed in North America or are performing military exercises or training in North America.

(b) The Secretary of Defense may not designate a country for an agreement under this section-

(1) unless the Secretary, after consultation with the Secretary of State, determines that the designation of such country for such purpose is in the interest of the national security of the United States; and

(2) in the case of a country which is not a member of the North Atlantic Treaty Organization, notifies the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives at least 30 days before the date on which such country is designated by the Secretary under subsection (a).

(c) The Secretary of Defense may not use the authority of this chapter to procure from any foreign government as a routine or normal source any goods or services reasonably available from United States commercial sources.

(d) the Secretary shall prescribe regulations to ensure that contracts entered into under this chapter are free from self-dealing, bribery, and conflict of interests.

(Added P.L. 96-323, §2(a), Aug. 4, 1980, 94 Stat. 1016. § 2322, and renumbered § 2342 and amended P.L. 99-145, §1304(a) (1), (4), Nov. 8, 1985, 99 Stat. 741; revised in its entirety P.L. 99-661, § 1104(a), Nov. 14, 1986, 100 Stat. 3963.)

§ 2343. Law applicable to acquisition and cross-servicing agreements

(a) Except as provided in subsection (b), acquisition of logistic support, supplies, and services under section 2341 of this title and agreements entered into under section 2342 of this title shall be made in accordance with chapter 137 of this title and the provisions of this chapter.

(b) Sections 2207, 2304(a), 2306(a), 2306(b), 2306(c), 2306a, and 2313 of this title, section 3741 of the Revised Statutes (41 U.S.C. 22), and section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall not apply to acquisitions made under the authority of section 2341 of this title or to agreements entered into under section 2342 of this title.

(Added P.L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2323, renumbered § 2343 and amended P.L. 99-145, § 961(b), § 1304(a)(5), Nov. 8, 1985, 99 Stat. 703, 741; amended P.L. 100-26, §7(g)(2), April 21, 1987, 101 Stat. 282.)

§ 2344. Methods of payment for acquisitions and transfers by the United States

(a) Logistics support, supplies, and services may be acquired or transferred by the United States under the authority of this chapter on a reimbursement basis or by replacement-in-kind or exchange of supplies or services of an identical or substantially identical nature.

(b)(1) In entering into agreements with the Government of another North Atlantic Treaty Organization country or other foreign country for the acquisition or transfer of logistic support, supplies, and services on a reimbursement basis, the Secretary of Defense shall negotiate for adoption of the following pricing principles for reciprocal application:

(A) The price charged by a supplying country for logistics support, supplies, and services specifically procured by the

supplying country from its contractors for a recipient country shall be no less favorable than the price for identical items or services charged by such contractors to the armed forces of the supplying country, taking into account price differentials due to delivery schedules, points of delivery, and other similar considerations.

(B) The price charged a recipient country for supplies furnished by a supplying country from its inventory, and the price charged a recipient country for logistics support and services furnished by the officers, employees, or governmental agencies of a supplying country, shall be the same as the price charged for identical supplies, support, or services acquired by an armed force of the supplying country from such governmental sources.

(2) To the extent that the Secretary of Defense is unable to obtain mutual acceptance by the other country involved of the reciprocal pricing principles for reimbursable transactions set forth in paragraph (1)-

(A) the United States may not acquire from such country any logistic support, supply, or service not governed by such reciprocal pricing principles unless the United States forces commander acquiring such support, supply, or service determines (after price analysis) that the price thereof is fair and reasonable; and

(B) transfers by the United States to such country under this chapter of any logistic support, supply, or service that is not governed by such reciprocal pricing principles shall be subject to the pricing provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(3) To the extent that indirect costs (including charges for plant and production equipment), administrative surcharges, and contract administration costs with respect to any North Atlantic Treaty Organization country or other foreign country are not waived by operation of the reciprocal pricing principles of paragraph (1), the Secretary of Defense may, on a reciprocal basis, agree to waive such costs.

(4) The pricing principles set forth in paragraph (2) and the waiver authority provided in paragraph (3) shall also apply to agreements with North Atlantic Treaty Organization subsidiary bodies under this chapter.

(Added P.L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2324, and amended P.L. 97-22, § 11(a)(8), July 10, 1981, 95 Stat. 138, renumbered § 2344 P.L. 99-145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99-661, § 1104(b), Nov. 14, 1986, 100 Stat. 3964.)

§ 2345. Liquidation of accrued credits and liabilities

(a) Credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and

services under the authority of this chapter shall be liquidated not less often than once every three months by direct payment to the entity supplying such support, supplies, or services by the entity receiving such support, supplies, or services.

(b) Payment-in-kind or exchange entitlements accrued as a result of acquisitions and transfers of logistic support, supplies, and services under authority of this chapter shall be satisfied within 12 months after the date of the delivery of the logistic support, supplies, or services.

(Added P.L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2325, renumbered § 2345, P.L. 99-145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99-661, § 1104(c), Nov. 14, 1986, 100 Stat. 3965.)

§ 2346. Crediting of receipts

Any receipt of the United States as a result of an agreement entered into under this chapter shall be credited to applicable appropriations, accounts, and funds of the Department of Defense.

(Added P.L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2326, renumbered § 2346, P.L. 99-145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741.)

§ 2347. Limitation on amounts that may be obligated or accrued by the United States

(a)(1) Except during a period of active hostilities involving the North Atlantic Treaty Organization, the total amount of reimbursable liabilities that the United States may accrue under this chapter (before the computation of offsetting balances) may not exceed \$100,000,000 in any fiscal year, and of such amount not more than \$25,000,000 in liabilities may be accrued for the acquisition of supplies (other than petroleum, oils, and lubricants).

(2) Except during a period of active hostilities in the military region affecting a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements, the total amount of reimbursable liabilities that the United States may accrue under this chapter (before the computation of offsetting balances) with such country may not exceed \$10,000,000 in any fiscal year, and of such amount not more than \$2,500,000 in liabilities may be accrued for the acquisition of supplies (other than petroleum, oils, and lubricants). The \$10,000,000 limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(b)(1) Except during a period of active hostilities involving the North Atlantic Treaty Organization, the total amount of reimbursable credits that the United States may accrue under this chapter (before the computation of offsetting balances) may not exceed \$100,000,000 in any fiscal year.

(2) Except during a period of active hostilities in the military region affecting a country referred to in paragraph (1), the total amount of reimbursable credits that the United States may accrue under this chapter from such country (before computation of offsetting balances) may not exceed \$10,000,000 in any fiscal year. Such limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(Added P.L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2327, renumbered § 2347, P.L. 99-145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99-661, § 1104(d), Nov. 14, 1986, 100 Stat. 3965.)

§ 2348. Inventories of supplies not to be increased

Inventories of supplies for elements of the armed forces may not be increased for the purpose of transferring supplies under the authority of this chapter.

(Added P.L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2328, amended P.L. 97-22, § 11(a)(8), July 10, 1981, 95 Stat. 138, and renumbered § 2348, P.L. 99-145, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99-661, § 1104(e), Nov. 14, 1986, 100 Stat. 3965.)

[§ 2329. Repealed. P.L. 99-145, § 1304(a)(2), Nov. 8, 1985, 99 Stat. 741]

§ 2349. Annual reports

The Secretary of Defense shall submit to the Congress not later than February 1 of each year a report containing-

(1) a description of each agreement entered into under the authority of this chapter that was in effect during the fiscal year preceding the fiscal year in which such report is submitted;

(2) a report of the dollar value of each reimbursable acquisition or transfer of logistic support, supplies, or services by the United States (by appropriation, account, or fund) during such fiscal year under each such agreement;

(3) a report of nonreimbursable acquisitions and transfers of logistic support and services by the United States (by appropriation, account, and fund) during such fiscal year under each such agreement; and

(4) a description of each agreement entered into (or expected to be entered into) under the authority of this chapter that is expected to be in effect during the fiscal year in which such

report is submitted, together with a report of the estimated total dollar value of acquisitions and transfers by the United States (by appropriation, account, or fund) expected to be made during such fiscal year under each such agreement.

(Added P.L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2330, and renumbered § 2349, P.L. 99-145, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741.)

§ 2350. Definitions

In this chapter:

(1) The term "logistic support, supplies, and services" means food, billeting, transportation, petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, and port services.

(2) The term "North Atlantic Treaty Organization subsidiary bodies" means-

(A) any organization within the meaning of the term "subsidiary bodies" in article I of the multilateral treaty on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, signed at Ottawa on September 20, 1951 (TIAS 2992; 5 UST 1087); and

(B) any international military headquarters or organization to which the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, signed at Paris on August 28, 1952 (TIAS 2978; 5 UST 870), applies.

(3) The term "military region" means the geographical area of responsibility assigned to the commander of a unified combatant command (excluding Europe and adjacent waters).

(Added P.L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1019, § 2331, and renumbered § 2350, P.L. 99-145, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741; amended P.L. 99-661, § 1104(f), Nov. 14, 1986, 100 Stat. 3965; P. L. 100-26, § 7(k)(2), April 21, 1987, 101 Stat. 284.)

E2. ENCLOSURE 2

REFERENCES, continued

- (e) Section 22 (Section 3741 of the Revised Statutes) of title 41, United States Code
- (f) App. 2168, (Section 719 of the Defense Production Act of 1950, as amended) of title 50, United States Code
- (g) Department of Defense Federal Acquisition Regulation Supplement
- (h) Section 2751 et seq. of title 22, United States Code, Arms Export Control Act, as amended
- (i) DoD Instruction 2010.10, "Mutual Logistics Support Among the United States, Governments of Other NATO Countries, NATO Subsidiary Bodies, and Other Eligible Foreign Countries--Financial Policy," October 30, 1987
- (j) Section 2306(g) of title 10, United States Code
- (k) [DoD Directive 5530.3](#), "International Agreements," June 11, 1987
- (l) "Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff," signed at Ottawa on September 20, 1951 (TIAS 2992, 5 UST 1087)
- (m) "Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty," signed at Paris on August 28, 1952 (TIAS 2978, 5 UST 870)

E3. ENCLOSURE 3

DEFINITIONS

E3.1.1. Acquisition. Obtaining logistic support, supplies, or services either under an acquisition arrangement without a cross-servicing agreement or under a cross-servicing agreement, whether for payment in currency, replacement-in-kind, or exchange of identical or substantially identical logistic support, supplies, or services.

E3.1.2. Cross-Servicing Agreement. Any agreement concluded with the government of a NATO country, NATO subsidiary body, or other designated country under which the United States agrees to provide logistic support, supplies, and services to the armed forces of such government or subsidiary body in return for the reciprocal provision of logistic support, supplies, and services by such country or subsidiary body to the U.S. Armed Forces. Such cross-servicing agreements establish principles and provisions for effecting required support, but do not bind either party to any particular number or monetary value of transactions.

E3.1.3. Designated Country. Includes all NATO countries and NATO subsidiary bodies. Additionally, an eligible foreign country not a member of NATO which, after DoS consultation, and a minimum 30-days notification to the Committees on Armed Services and Foreign Relations of the United States Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives, as required by this Directive, is authorized to enter into a cross-servicing agreement with the United States under NMSA authority.

E3.1.4. Eligible Country. Includes all NATO countries and NATO subsidiary bodies. Additionally, the term includes any other foreign country that meets one or more of the following criteria:

E3.1.4.1. Has a defense alliance with the United States;

E3.1.4.2. Permits the stationing of members of the U.S. Armed Forces or homeporting of U.S. Naval vessels in such country;

E3.1.4.3. Agrees to preposition U.S. materiel in such country; or

E3.1.4.4. Serves as the host country for U.S. Forces in exercises or permits other U.S. military operations in such country.

E3.1.5. Europe and Adjacent Waters. The territories of those NATO countries and subsidiary bodies and those waters within the "North Atlantic Treaty Area" as defined in the North Atlantic Treaty (amended by the Protocols on the Accession of Spain, Greece, Turkey, and the Federal Republic of Germany), excluding North America. The NATO European countries include Belgium, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and Canada when Canadian forces are operating in Europe and adjacent waters.

E3.1.6. Governments of Foreign Countries. The military or civilian governmental organizations, departments, and ministries, or any subdivision thereof, of a foreign country.

E3.1.7. Implementing Arrangement. A supplementary arrangement for specific logistic support, supplies, services, or events that prescribe details, terms, and conditions that further define and carry out cross-servicing agreements. Implementing arrangements may have more precisely defined levels of performance than do cross-servicing agreements. However, implementing arrangements completely shall be consistent with cross-servicing agreements and this Directive.

E3.1.8. Logistic Support, Supplies, and Services. Food, billeting, transportation (except airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, and air and sea port services. The term "ammunition" specifically excludes guided missiles; naval mines and torpedoes; and nuclear ammunition and included items such as warheads, warhead sections, projectiles, demolition munitions, and training ammunition; cartridge and propellant-actuated devices; chaff and chaff dispensers; guidance kits for bombs or other ammunition; and chemical ammunition (other than riot control).

E3.1.9. Major Command Level. The component commands of Unified Combatant Commands and major commands operating in the area of responsibility of a Unified Combatant Command; i.e., United States Army, Europe; United States Air Forces, Europe; and United States Navy, Europe.

E3.1.10. Military Region. The geographical area of responsibility assigned to the commander of a Unified Combatant Command (except Europe and adjacent waters, which retains its separate identification as NATO).

E3.1.11. NATO Subsidiary Body

E3.1.11.1. Any organization, within the meaning of the term "subsidiary bodies" in Article I of the multilateral "Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff," signed at Ottawa on September 20, 1951 (TIAS 2992; 5 UST 1087) (reference (l)).

E3.1.11.2. Any international military headquarters or organization to which the "Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty," signed at Paris on August 28, 1952 (TIAS 2978; 5 UST 870) applies (reference (m)).

E3.1.12. Transfers. Selling (whether for payment in currency, replacement-in-kind, or exchange) of logistic support, supplies, or services under a cross-servicing agreement.